IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WA.No. 654 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.3809/2007 Dated 06/03/2007
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APPELLANT: PETITIONER IN THE WP(C)

M/S ORMA MARBLE PALACE,
N.H.BYEPASS, EDAPPALLY, KOCHI-24,
REPRESENTED BY ITS MANAGING PARTNER,
ALJO JOSEPH.

BY ADV. SRI.V.P.SUKUMAR

RESPONDENTS: RESPONDENTS IN THE WP(C)

THE INTELLIGENCE INSPECTOR,
SQUAD NO.1. COMMERCIAL TAXES,
ERNAKULAM.

BY SPL. GOVERNMENT PLEADER (TAXES) MATHEW G. VADAKKEL.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN, Ag.C.J. & M.N. KRISHNAN, J.

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W.A. NO 654 OF 2007

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Dated this the 13th day of March, 2007.

J U D G M E N T

Radhakrishnan,(Ag.C.J.)

The writ petition was preferred by the appellant herein seeking for a direction to issue a writ of certiorari to quash Ext.P2 Notice issued to the appellant/petitioner and also for a direction to respondent to release the goods detained as per Ext.P2 notice without insisting payment of security deposit u/s 47(2) of the KVAT Acts.

2. When the matter was placed before the learned Single Judge, this Court appointed an Advocate Commissioner who has submitted a report which would indicate that notice of inspection was given to the parties on either side and quantity of marbles transported by the petitioner was determined and found that there was no excess quantity as alleged in Ext.P2 notice. A Counter affidavit has been filed on behalf of respondents. In paragraph 6 of the counter affidavit there is a statement to the effect that there was a mistake in

the measurement shown in Ext.P2 and it was due to inadvertent oversight in regard to the unit of measurement reflected in the invoice. However, it is stated that the ground of under valuation was correct. In view of the circumstances, we find it is proper to give a direction to the respondents to take note of the objections raised by the assessee as well as the report of the Advocate Commissioner and pass appropriate orders. All the same there is also a direction to the respondents to release the goods, on the appellant furnishing security as provided under proviso to Section 47(2) of the KVAT Act.

With the above direction, this writ appeal is disposed of.

K.S. RADHAKRISHNAN,
ACTING CHIEF JUSTICE.

M.N. KRISHNAN, JUDGE.

ul/-